IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6019 of 2007()

AGAINST THE ORDER DATED / / IN CRMC 913 2007 IN CRLMC.906/2007 of D.C. & SESSIONS COURT,KOZHIKODE
CRIME NO.285/07 OF KASBA POLICE STATION

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PETITIONERS/ACCUSED

GOKULDAS, S/O SAHADEVAN,
MURINGATH HOUSE, NADUVATTOM P.O.,
NORTH BEYPORE, CALICUT.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS: STATE

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1. STATE OF KERALA, REPRESENTED BY ITS THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE, KASBA POLICE STATION, KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6019 OF 2007

Dated this the 22nd day of October, 2007

ORDER

When this petition was filed, according to the petitioner, he was not an accused and he has not been arrayed as an accused. Interim directions were issued on 4/10/07. Accordingly, he had appeared before the Investigating Officer. It is now confirmed that the petitioner is the 3rd accused in the crime and has been arrayed as such. Altogether, there are 7 accused persons. The accused persons face allegations for offences punishable, inter alia, under Secs.452, 326 and 308 of the IPC. The 1st accused was allegedly evicted from the premises in pursuance of an order obtained from the competent court by the de facto complainant. As a retaliation against that, the accused persons are alleged to have trespassed into the house of the de

facto complainant and attacked him with dangerous weapons and caused damage to the building. Investigation is in progress. As indicated earlier, the petitioner is now arrayed as an accused. In view of the interim directions issued by this Court, the petitioner has not been arrested and interrogated. He was allowed to leave the Police Station after executing a bond without sureties as directed by this Court.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He was not at all present at the scene of the crime, it is contended.

3. This application is opposed by the learned Public Prosecutor. The weapon of offence has not been recovered. The petitioner has to be interrogated in detail. An attempt to recover the weapon must be made. The victim has suffered a fracture as is indicated in the records available in the Case Diary, submits learned Public Prosecutor.

4. Having considered all the relevant inputs, I am not persuaded to agree that there are any features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. I agree with the learned Public Prosecutor that the petitioner must surrender before the Investigating Officer or the learned Magistrate having

jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge